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REME COURT, U. S.

IN THE

Supreme Court of the United States

October Term, 1970.

No. 443.

BUCKS COUNTY CABLE TV, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS COMMISSION, ROBERT T. BARTLEY, ET AL.,

and

U. S. COMMUNICATIONS CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

REPLY BRIEF FOR PETITIONER, BUCKS COUNTY CABLE TV, INC.

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The essential position taken by the Government is that *United States v. Southwestern Cable Co.*, 392 U. S. 157 (1968) authorizes the Federal Communications Commission by "general rule" to permit the mere filing of a petition by a private party to stay automatically the operation of petitioner's business, regardless of *what* objection the private party alleges as the basis for its petition, and without *any* review whatsoever by the Commission of the nature or sufficiency of the objection. However, the *Southwestern Cable* case was *explicitly* based on an individualized review by the Commission *prior* to the issuance of a stay. Thus, the present case represents an attempt on the part of the Government to achieve a drastic expansion of the authority previously permitted to federal administrative agencies.

Moreover, the Government's revision of the *Southwestern Cable* case is diametrically opposed to the trend of this Court's decisions consistently invalidating *ex parte* orders which affect life, liberty or property *unless some impartial governmental authority intervenes, reviews the matter, and exercises independent discretion and judgment.* See Page 9 of the *Petition for Writ of Certiorari.* Although cases involving search warrants, arrest warrants and building inspection orders originate with governmental agencies, this Court's requirement that such orders issue only after a review by an independent judicial or administrative officer applies even more forcefully where, as here, the restraining order issues solely at the discretion of a private competitor.

The Intervenor (but not the Government) argues that the automatic stay somehow became moot when the Commission entered its Order of January 22, 1969. See *Brief for U. S. Communications Corporation*, Page 9. This argument ignores the fact that CATV systems lawfully in operation prior to December 20, 1968 were "grandfathered"

under the existing rules which permitted Bucks County Cable's operation. Thus, if the automatic stay was invalid, Bucks County Cable was operating lawfully prior to December 20, 1968, and may continue to do so.

Respectfully submitted,

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Date: August 31, 1970